Supreme Court, U.S.
FILED
APR 4 1987
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U.S.S.C. No. 87-24

Ninth Circuit,
U.S.C.A. No. 85-6320

Southern District of California,
U.S.D.C. No. CV-83-2306-LCN

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

LAWRENCE MOORE and WALTER F. WHELAN, JR.

Plaintiff-Petitioners,

v.

BECHTEL POWER CORPORATION, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, UNION LOCAL 569, PAUL BLACKWOOD and WAYNE LOVIN,

Defendant-Respondents.

APPENDIX TO WRIT OF CERTIORARI

ON ORDER OF THE NINTH UNITED STATES CIRCUIT COURT OF APPEALS

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APPENDIX

Exhibit A
Appellate Court Order 1
(Ninth U. S. Circuit)

Exhibit B
Trial Court Order 4
(Southern District of California)

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWRENCE MOORE and WALTER F. WHELAN, JR.,	)
Plaintiffs-Appellants,	)
v.	)
BECHTEL POWER CORPORATION, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and LOCAL 569, PAUL BLACKWOOD, and WAYNE LOVIN,	)
Defendants-Appellees.	)

No. 85-6320
DC# CV 83-2306-LCN
ORDER*

Appeal from the United States District Court for the Southern Distict of California Leland C. Nielsen, District Judge, Presiding Argued and Submitted December 4, 1986 Pasadena, California

EXHIBIT A

Before: SNEED and SCHROEDER, Circuit Judges, and MARQUES, ** District Judge.

We have previously held that the six-month service requirement, as well as the six-month statute of limitations, found in section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), applies to a hybrid action brought under section 301 of the Labor Management Relations Act, 29 U.S.C. §185 et seq. Gallon v. Lenin Metals Corp., 779 F.2d 1439, 1441 (9th Cir. 1986), petition for cert. filed, 54 U.S.L.W. 3763 (U.S. May 7, 1986) (No. 85-1839). Plaintiffs Lawrence Moore and Walter Whelan brought this hybrid action against defendants Bechtel Power Corporation and International Brotherhood of Electrical Workers, Union Local 569, alleging violation of the collective bargaining agrement and the union's breach of its duty of fair representation. The record

below reveals that no complaint was served on any of the defendants within six months of the action's accural. Therefore, the plaintiffs' causes of action are time barred. The summary judgment granted defendants in this case is affirmed.

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* This disposition is not approprate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

**Honorable Alfredo Marquez, United States District Judge for the District of Arizona, sitting by designation.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LAWRENCE MOORE and WALTER F. WHELAN, JR.,	)
Plaintiffs,	)
v.	)
BECHTEL POWER CORPORATION, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS and LOCAL 569, PAUL BLACKWOOD, and WAYNE LOVIN,	)
Defendants.	)

Civil No. 83-2306-N(CM)
ORDER:
1) GRANTING DEFENDANTS BECHTEL and LOCAL 569's MOTIONS FOR SUMMARY JUDGMENT;
2) DISMISSING THIRD CAUSE OF ACTION;
3) DENYING MOTION TO RE-OPEN DISCOVERY; and
4) DENYING MOTION FOR JURY TRIAL

EXHIBIT B

This matter came before the Court on August 12, 1985, for hearing on Defendants' motions for summary judgment and Defendant Bechtel Power Corporation appeared by Donald A. Newman of Thelen, Marrin, Johnson & Bridges. Defendants Local 569, Paul Blackwood, and Wayne Lovin appeared by Herbert M. Ansell of Levy, Ansell & Goldman. Plaintiffs appeared by George L. de la Flor. Upon consideration of the arguments of counsel, and the moving and opposing papers, this Court renders the following decisions:

I

Local 569's motion for summary judgment is GRANTED. When a union and an employer agree that disputes arising under a collective bargaining agreement will be settled in a particular way, an employee's grievance is entrusted to the

judgment and discretion of the union of which he is a member. Only if the union shows reckless disregard for the employee's rights as a member of the collective bargaining unit will the union have breached its duty of fair representation. Castelli v. Douglas Aircraft Co., 752 F.2d 1480, 1482-83 (9th Cir. 1985). In this case, interpreting the record in the light most favorable to Plaintiffs, this Court concludes that Local 569 representation was adequate, given the merits of the termination grievances.

Plaintiffs Moore and Whelan are experienced journeyman electricians who accepted job referrals to Bechtel Power Corporation at the San Onofre Nuclear Generating Station (SONGS) in July of 1982, knowing that SONGS was an operating nuclear facility. Both Plaintiffs re-

ceived and acknowledged written warnings from the Local and from Bechtel that they may be required to work in radiation areas. Both Plaintiffs underwent radiation school training. Yet, when assigned to areas where low-level radiation was present, both Plaintiffs refused the work assignments.

Following Plaintiffs' terminations, Local 569 represented the pair up through Step 3 of the grievance procedure, as provided in the relevant collective bargaining agreement. Although investigation was minimal, it was as thorough as required by the case. Castelli, 752 F.2d at 1483. The record reveals that International Representative Kenneth Johnson presented several arguments on behalf of the Plaintiffs, and that the relationship between Local 569 and the employer was advesarial as to the issue

of the terminations. When the Presidents' Committee determined that the discharges were within the employer's "management rights" under the collective bargaining agreement, the union's representation was contractually at an end. This Court finds nothing in the record to rise to an "egregious disregard" for Moore's or Whelan's rights. Id.

II

Bechtel Power Corporation's motion for summary judgment is also GRANTED. Absent a genuine issue of material fact on the issue whether Local 569 breached its duty of fair representation, Plaintiffs are not entitled to proceed with their action against the employer. See, e.g., Franklin v. Southern Pac. Transp. Co., 593 F.2d 899, 901 (9th (sic) Cir. 1979).

III

Plaintiffs' third cause of action, charging Defendants Paul Blackwood and Wayne Lovin with the improper collection of a one (1%) "work tax" is DISMISSED, without prejudice, for failure to exhaust internal union appeals procedures. This Court finds that the IBEW Constitution provides an adequate internal procedure for pursuing claims of misconduct against local union leadership, and that Plaintiffs have not shown that appeals to the International Vice President, the International President, the International Executive Council, and the International Convention would be futile. See Scoggins v. Boeing Co., Inc., 742 F.2d 1225, 1229-30 (9th Cir. 1984). The interpretation and application of a union's By-Laws and Constitution are best left, in the first instance, to union

officials.

IV

Finally, Plaintiff's motions for jury trial and to re-open discovery are DENIED as moot.

IT IS SO ORDERED.

Dated: September 6, 1985

LELAND C. NIELSEN,
United States District Judge

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